

## § 550.40

- (a) Trustee.
- (b) Executor.
- (c) Administrator.
- (d) Registrar of stocks and bonds.
- (e) Transfer agent.
- (f) Assignee.
- (g) Receiver.
- (h) Guardian or conservator of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.
- (i) A fiduciary in a relationship established under a State law that is substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act as published by the American Law Institute.
- (j) Investment adviser, if you receive a fee for your investment advice.
- (k) Any capacity in which you have investment discretion on behalf of another.
- (l) Any other similar capacity that the OTS may authorize under 12 U.S.C. 1464(n).

### § 550.40 When do I have investment discretion?

(a) *General.* You have investment discretion when you have, with respect to a fiduciary account, the sole or shared authority to determine what securities or other assets to purchase or sell on behalf of that account. It does not matter whether you have exercised this authority.

(b) *Delegations.* You retain investment discretion if you delegate investment discretion to another. You also have investment discretion if you receive delegated authority to exercise investment discretion from another.

### § 550.50 What is a fiduciary account?

A fiduciary account is an account that you administer acting in a fiduciary capacity.

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### § 550.60 What other definitions apply to this part?

*Activities ancillary to your fiduciary business* include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. This list is illustrative and not comprehensive. Other activities may also be “ancillary activities” for purposes of this definition.

*Affiliate* has the same meaning as in 12 U.S.C. 221a(b). For purposes of this part, substitute the term “Federal savings association” for the term “member bank” whenever it appears in 12 U.S.C. 221a(b).

*Applicable law* means the law of a State or other jurisdiction governing your fiduciary relationships, any Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.

*Fiduciary activities* include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding fiduciary assets, or making discretionary decisions regarding investment or distribution of assets.

*Fiduciary officers and employees* means the officers and employees of a Federal savings association to whom the board of directors or its designee has assigned functions involving the exercise of the association’s fiduciary powers.

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## Subpart A—Obtaining Fiduciary Powers